

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

LARRY WILBURN, JR.,

Plaintiff,

vs.

ANSWER WITH JURY DEMAND

CITY OF ALBANY, City of Albany Police Officers
DEVIN ANDERSON and JOHN DOE 1, whose
name is presently unknown, individually and/or as
agents, servants, and/or employees of the City of
Albany, COUNTY OF ALBANY, HON. CRAIG D.
APPLE, Albany County Sheriff, JOHN/JANE DOE 2
and 3, CORRECTIONAL MEDICAL CARE, INC.,
and JOHN/JANE DOE 4 and 5,

**Case No.: 1:13-CV-1452
(GLS/CFH)**

Defendants.

Defendant, CORRECTIONAL MEDICAL CARE, INC., by and through its attorneys,
Smith, Sovik, Kendrick & Sugnet, P.C., hereby answers plaintiff's Complaint as follows:

1. Paragraph "1" of plaintiff's Complaint contains plaintiff's characterizations of his
claims. No response is required. To the extent a response is required, defendant **DENIES** the
allegations contained in paragraph "1" of plaintiff's Complaint.

2. In response to paragraph "2" of plaintiff's Complaint, defendant **ADMITS** that
this Court has jurisdiction to adjudicate plaintiff's claims.

3. **DENIES KNOWLEDGE OR INFORMATION** sufficient to form a belief as to
the truth of the allegations contained in paragraph "3" of plaintiff's Complaint.

4. **DENIES KNOWLEDGE OR INFORMATION** sufficient to form a belief as to
the truth of the allegations contained in paragraph "4" of plaintiff's Complaint.

5. **DENIES KNOWLEDGE OR INFORMATION** sufficient to form a belief as to the truth of the allegations contained in paragraph "5" of plaintiff's Complaint.

6. **DENIES KNOWLEDGE OR INFORMATION** sufficient to form a belief as to the truth of the allegations contained in paragraph "6" of plaintiff's Complaint.

7. **DENIES KNOWLEDGE OR INFORMATION** sufficient to form a belief as to the truth of the allegations contained in paragraph "7" of plaintiff's Complaint.

8. **DENIES KNOWLEDGE OR INFORMATION** sufficient to form a belief as to the truth of the allegations contained in paragraph "8" of plaintiff's Complaint.

9. **DENIES KNOWLEDGE OR INFORMATION** sufficient to form a belief as to the truth of the allegations contained in paragraph "9" of plaintiff's Complaint.

10. Defendant **ADMITS** the allegations contained in paragraph "10" of plaintiff's Complaint; except, **DENIES KNOWLEDGE OR INFORMATION** as to the employment status of the unnamed Doe defendants.

11. **DENIES KNOWLEDGE OR INFORMATION** sufficient to form a belief as to the truth of the allegations contained in paragraph "11" of plaintiff's Complaint.

12. **ADMITS** the allegations contained in paragraph "12" of plaintiff's Complaint.

13. **DENIES** the allegations contained in paragraph "13" of plaintiff's Complaint as they pertain to the answering defendant. Otherwise, **DENIES KNOWLEDGE OR INFORMATION** sufficient to form a belief as to the truth of the allegations contained in paragraph "13" of plaintiff's Complaint.

14. **DENIES** the allegations contained in paragraph "14" of plaintiff's Complaint.
15. **DENIES KNOWLEDGE OR INFORMATION** sufficient to form a belief as to the truth of the allegations contained in paragraph "15" of plaintiff's Complaint.
16. **DENIES KNOWLEDGE OR INFORMATION** sufficient to form a belief as to the truth of the allegations contained in paragraph "16" of plaintiff's Complaint.
17. **DENIES KNOWLEDGE OR INFORMATION** sufficient to form a belief as to the truth of the allegations contained in paragraph "17" of plaintiff's Complaint.
18. **DENIES KNOWLEDGE OR INFORMATION** sufficient to form a belief as to the truth of the allegations contained in paragraph "18" of plaintiff's Complaint.
19. **DENIES KNOWLEDGE OR INFORMATION** sufficient to form a belief as to the truth of the allegations contained in paragraph "19" of plaintiff's Complaint.
20. **DENIES KNOWLEDGE OR INFORMATION** sufficient to form a belief as to the truth of the allegations contained in paragraph "20" of plaintiff's Complaint.
21. **DENIES KNOWLEDGE OR INFORMATION** sufficient to form a belief as to the truth of the allegations contained in paragraph "21" of plaintiff's Complaint.
22. **DENIES KNOWLEDGE OR INFORMATION** sufficient to form a belief as to the truth of the allegations contained in paragraph "22" of plaintiff's Complaint.
23. **DENIES KNOWLEDGE OR INFORMATION** sufficient to form a belief as to the truth of the allegations contained in paragraph "23" of plaintiff's Complaint.
24. **DENIES KNOWLEDGE OR INFORMATION** sufficient to form a belief as to the truth of the allegations contained in paragraph "24" of plaintiff's Complaint.

25. **DENIES KNOWLEDGE OR INFORMATION** sufficient to form a belief as to the truth of the allegations contained in paragraph "25" of plaintiff's Complaint.

26. **DENIES KNOWLEDGE OR INFORMATION** sufficient to form a belief as to the truth of the allegations contained in paragraph "26" of plaintiff's Complaint.

27. **DENIES KNOWLEDGE OR INFORMATION** sufficient to form a belief as to the truth of the allegations contained in paragraph "27" of plaintiff's Complaint.

28. **DENIES** the allegations contained in paragraph "28" of plaintiff's Complaint.

29. **DENIES** the allegations contained in paragraph "29" of plaintiff's Complaint.

30. **DENIES** the allegations contained in paragraph "30" of plaintiff's Complaint.

31. **DENIES KNOWLEDGE OR INFORMATION** sufficient to form a belief as to the truth of the allegations contained in paragraph "31" of plaintiff's Complaint.

32. **DENIES KNOWLEDGE OR INFORMATION** sufficient to form a belief as to the truth of the allegations contained in paragraph "32" of plaintiff's Complaint.

33. **DENIES KNOWLEDGE OR INFORMATION** sufficient to form a belief as to the truth of the allegations contained in paragraph "33" of plaintiff's Complaint.

34. **DENIES KNOWLEDGE OR INFORMATION** sufficient to form a belief as to the truth of the allegations contained in paragraph "34" of plaintiff's Complaint.

35. **DENIES KNOWLEDGE OR INFORMATION** sufficient to form a belief as to the truth of the allegations contained in paragraph "35" of plaintiff's Complaint.

36. **DENIES KNOWLEDGE OR INFORMATION** sufficient to form a belief as to the truth of the allegations contained in paragraph "36" of plaintiff's Complaint.

37. **DENIES** the allegations contained in paragraph "37" of plaintiff's Complaint.

38. **DENIES** the allegations contained in paragraph "38" of plaintiff's Complaint insofar as the allegations pertain to the answering defendant. Otherwise, **DENIES KNOWLEDGE OR INFORMATION** sufficient to form a belief as to the truth of the allegations contained in paragraph "38" of plaintiff's Complaint.

39. **DENIES** the allegations contained in paragraph "39" of plaintiff's Complaint insofar as the allegations pertain to the answering defendant. Otherwise, **DENIES KNOWLEDGE OR INFORMATION** sufficient to form a belief as to the truth of the allegations contained in paragraph "39" of plaintiff's Complaint.

40. **DENIES** the allegations contained in paragraph "40" of plaintiff's Complaint insofar as the allegations pertain to the answering defendant. Otherwise, **DENIES KNOWLEDGE OR INFORMATION** sufficient to form a belief as to the truth of the allegations contained in paragraph "40" of plaintiff's Complaint.

41. **REPEATS and REALLEGES** the admissions and denials as set forth hereinabove contained in paragraphs "1" through "40" of plaintiff's Complaint.

42. **DENIES KNOWLEDGE OR INFORMATION** sufficient to form a belief as to the truth of the allegations contained in paragraph "42" of plaintiff's Complaint.

43. **DENIES KNOWLEDGE OR INFORMATION** sufficient to form a belief as to the truth of the allegations contained in paragraph "43" of plaintiff's Complaint.

44. **DENIES KNOWLEDGE OR INFORMATION** sufficient to form a belief as to the truth of the allegations contained in paragraph "44" of plaintiff's Complaint.

45. **DENIES KNOWLEDGE OR INFORMATION** sufficient to form a belief as to the truth of the allegations contained in paragraph "45" of plaintiff's Complaint.

46. **DENIES KNOWLEDGE OR INFORMATION** sufficient to form a belief as to the truth of the allegations contained in paragraph "46" of plaintiff's Complaint.

47. **DENIES KNOWLEDGE OR INFORMATION** sufficient to form a belief as to the truth of the allegations contained in paragraph "47" of plaintiff's Complaint.

48. **REPEATS and REALLEGES** the admissions and denials as set forth hereinabove contained in paragraphs "1" through "47" of plaintiff's Complaint.

49. **DENIES KNOWLEDGE OR INFORMATION** sufficient to form a belief as to the truth of the allegations contained in paragraph "49" of plaintiff's Complaint.

50. **DENIES KNOWLEDGE OR INFORMATION** sufficient to form a belief as to the truth of the allegations contained in paragraph "50" of plaintiff's Complaint.

51. **DENIES KNOWLEDGE OR INFORMATION** sufficient to form a belief as to the truth of the allegations contained in paragraph "51" of plaintiff's Complaint.

52. **DENIES KNOWLEDGE OR INFORMATION** sufficient to form a belief as to the truth of the allegations contained in paragraph "52" of plaintiff's Complaint.

53. **DENIES KNOWLEDGE OR INFORMATION** sufficient to form a belief as to the allegations contained in paragraph "53" of plaintiff's Complaint.

54. **DENIES KNOWLEDGE OR INFORMATION** sufficient to form a belief as to the truth of the allegations contained in paragraph "54" of plaintiff's Complaint.

55. **REPEATS and REALLEGES** the admissions and denials as set forth hereinabove contained in paragraphs "1" through "54" of plaintiff's Complaint.

56. **DENIES KNOWLEDGE OR INFORMATION** sufficient to form a belief as to the truth of the allegations contained in paragraph "56" of plaintiff's Complaint.

57. **DENIES KNOWLEDGE OR INFORMATION** sufficient to form a belief as to the truth of the allegations contained in paragraph "57" of plaintiff's Complaint.

58. **DENIES KNOWLEDGE OR INFORMATION** sufficient to form a belief as to the truth of the allegations contained in paragraph "58" of plaintiff's Complaint.

59. **DENIES KNOWLEDGE OR INFORMATION** sufficient to form a belief as to the truth of the allegations contained in paragraph "59" of plaintiff's Complaint.

60. **DENIES KNOWLEDGE OR INFORMATION** sufficient to form a belief as to the truth of the allegations contained in paragraph "60" of plaintiff's Complaint.

61. **DENIES KNOWLEDGE OR INFORMATION** sufficient to form a belief as to the truth of the allegations contained in paragraph "61" of plaintiff's Complaint.

62. **DENIES KNOWLEDGE OR INFORMATION** sufficient to form a belief as to the truth of the allegations contained in paragraph "62" of plaintiff's Complaint.

63. **DENIES KNOWLEDGE OR INFORMATION** sufficient to form a belief as to the truth of the allegations contained in paragraph "63" of plaintiff's Complaint.

64. **DENIES KNOWLEDGE OR INFORMATION** sufficient to form a belief as to the truth of the allegations contained in paragraph "64" of plaintiff's Complaint.

65. **DENIES KNOWLEDGE OR INFORMATION** sufficient to form a belief as to the truth of the allegations contained in paragraph "65" of plaintiff's Complaint.

66. **DENIES KNOWLEDGE OR INFORMATION** sufficient to form a belief as to the truth of the allegations contained in paragraph "66" of plaintiff's Complaint.

67. **DENIES KNOWLEDGE OR INFORMATION** sufficient to form a belief as to the truth of the allegations contained in paragraph "67" of plaintiff's Complaint.

68. **DENIES KNOWLEDGE OR INFORMATION** sufficient to form a belief as to the truth of the allegations contained in paragraph "68" of plaintiff's Complaint.

69. **REPEATS and REALLEGES** the admissions and denials as set forth hereinabove contained in paragraphs "1" through "68" of plaintiff's Complaint.

70. **DENIES KNOWLEDGE OR INFORMATION** sufficient to form a belief as to the truth of the allegations contained in paragraph "70" of plaintiff's Complaint.

71. **DENIES KNOWLEDGE OR INFORMATION** sufficient to form a belief as to the truth of the allegations contained in paragraph "71" of plaintiff's Complaint.

72. **DENIES KNOWLEDGE OR INFORMATION** sufficient to form a belief as to the truth of the allegations contained in paragraph "72" of plaintiff's Complaint.

73. **DENIES KNOWLEDGE OR INFORMATION** sufficient to form a belief as to the truth of the allegations contained in paragraph "73" of plaintiff's Complaint.

74. **REPEATS and REALLEGES** the admissions and denials as set forth hereinabove contained in paragraphs "1" through "73" of plaintiff's Complaint.

75. **DENIES KNOWLEDGE OR INFORMATION** sufficient to form a belief as to the truth of the allegations contained in paragraph "75" of plaintiff's Complaint.

76. **DENIES KNOWLEDGE OR INFORMATION** sufficient to form a belief as to the truth of the allegations contained in paragraph "76" of plaintiff's Complaint.

77. **DENIES KNOWLEDGE OR INFORMATION** sufficient to form a belief as to the truth of the allegations contained in paragraph "77" of plaintiff's Complaint.

78. **DENIES KNOWLEDGE OR INFORMATION** sufficient to form a belief as to the truth of the allegations contained in paragraph "78" of plaintiff's Complaint.

79. **DENIES KNOWLEDGE OR INFORMATION** sufficient to form a belief as to the truth of the allegations contained in paragraph "79" of plaintiff's Complaint.

80. **REPEATS and REALLEGES** the admissions and denials as set forth hereinabove contained in paragraphs "1" through "79" of plaintiff's Complaint.

81. **DENIES KNOWLEDGE OR INFORMATION** sufficient to form a belief as to the truth of the allegations contained in paragraph "81" of plaintiff's Complaint.

82. **DENIES KNOWLEDGE OR INFORMATION** sufficient to form a belief as to the truth of the allegations contained in paragraph "82" of plaintiff's Complaint.

83. **DENIES KNOWLEDGE OR INFORMATION** sufficient to form a belief as to the truth of the allegations contained in paragraph "83" of plaintiff's Complaint.

84. **DENIES KNOWLEDGE OR INFORMATION** sufficient to form a belief as to the truth of the allegations contained in paragraph "84" of plaintiff's Complaint.

85. **DENIES KNOWLEDGE OR INFORMATION** sufficient to form a belief as to the truth of the allegations contained in paragraph "85" of plaintiff's Complaint.

86. **REPEATS AND REALLEGES** the admissions and denials as set forth hereinabove contained in paragraphs "1" through "85" of plaintiff's Complaint.

87. **DENIES KNOWLEDGE OR INFORMATION** sufficient to form a belief as to the truth of the allegations contained in paragraph "87" of plaintiff's Complaint.

88. **DENIES KNOWLEDGE OR INFORMATION** sufficient to form a belief as to the truth of the allegations contained in paragraph "88" of plaintiff's Complaint.

89. **DENIES KNOWLEDGE OR INFORMATION** sufficient to form a belief as to the truth of the allegations contained in paragraph "89" of plaintiff's Complaint.

90. **DENIES KNOWLEDGE OR INFORMATION** sufficient to form a belief as to the truth of the allegations contained in paragraph "90" of plaintiff's Complaint.

91. **DENIES KNOWLEDGE OR INFORMATION** sufficient to form a belief as to the truth of the allegations contained in paragraph "91" of plaintiff's Complaint.

92. **REPEATS AND REALLEGES** the admissions and denials as set forth hereinabove contained in paragraphs "1" through "91" of plaintiff's Complaint.

93. **DENIES KNOWLEDGE OR INFORMATION** sufficient to form a belief as to the truth of the allegations contained in paragraph "93" of plaintiff's Complaint.

94. **DENIES KNOWLEDGE OR INFORMATION** sufficient to form a belief as to the truth of the allegations contained in paragraph "94" of plaintiff's Complaint.

95. **DENIES KNOWLEDGE OR INFORMATION** sufficient to form a belief as to the truth of the allegations contained in paragraph "95" of plaintiff's Complaint.

96. **DENIES KNOWLEDGE OR INFORMATION** sufficient to form a belief as to the truth of the allegations contained in paragraph "96" of plaintiff's Complaint.

97. **DENIES KNOWLEDGE OR INFORMATION** sufficient to form a belief as to the truth of the allegations contained in paragraph "97" of plaintiff's Complaint.

98. **DENIES KNOWLEDGE OR INFORMATION** sufficient to form a belief as to the truth of the allegations contained in paragraph "98" of plaintiff's Complaint.

99. **REPEATS AND REALLEGES** the admissions and denials as set forth hereinabove contained in paragraphs "1" through "98" of plaintiff's Complaint.

100. **DENIES KNOWLEDGE OR INFORMATION** sufficient to form a belief as to the truth of the allegations contained in paragraph "100" of plaintiff's Complaint.

101. **DENIES KNOWLEDGE OR INFORMATION** sufficient to form a belief as to the truth of the allegations contained in paragraph "101" of plaintiff's Complaint.

102. **DENIES KNOWLEDGE OR INFORMATION** sufficient to form a belief as to the truth of the allegations contained in paragraph "102" of plaintiff's Complaint.

103. **DENIES KNOWLEDGE OR INFORMATION** sufficient to form a belief as to the truth of the allegations contained in paragraph "103" of plaintiff's Complaint.

104. **DENIES KNOWLEDGE OR INFORMATION** sufficient to form a belief as to the truth of the allegations contained in paragraph "104" of plaintiff's Complaint.

105. **REPEATS AND REALLEGES** the admissions and denials as set forth hereinabove contained in paragraphs "1" through "104" of plaintiff's Complaint.

106. **DENIES KNOWLEDGE OR INFORMATION** sufficient to form a belief as to the truth of the allegations contained in paragraph "106" of plaintiff's Complaint.

107. **DENIES KNOWLEDGE OR INFORMATION** sufficient to form a belief as to the truth of the allegations contained in paragraph "107" of plaintiff's Complaint.

108. **DENIES KNOWLEDGE OR INFORMATION** sufficient to form a belief as to the truth of the allegations contained in paragraph "108" of plaintiff's Complaint.

109. **DENIES KNOWLEDGE OR INFORMATION** sufficient to form a belief as to the truth of the allegations contained in paragraph "109" of plaintiff's Complaint.

110. **DENIES KNOWLEDGE OR INFORMATION** sufficient to form a belief as to the truth of the allegations contained in paragraph "110" of plaintiff's Complaint.

111. **REPEATS AND REALLEGES** the admissions and denials as set forth hereinabove contained in paragraphs "1" through "110" of plaintiff's Complaint.

112. **DENIES KNOWLEDGE OR INFORMATION** sufficient to form a belief as to the truth of the allegations contained in paragraph "112" of plaintiff's Complaint.

113. **DENIES KNOWLEDGE OR INFORMATION** sufficient to form a belief as to the truth of the allegations contained in paragraph "113" of plaintiff's Complaint.

114. **DENIES KNOWLEDGE OR INFORMATION** sufficient to form a belief as to the truth of the allegations contained in paragraph "114" of plaintiff's Complaint.

115. **DENIES KNOWLEDGE OR INFORMATION** sufficient to form a belief as to the truth of the allegations contained in paragraph "115" of plaintiff's Complaint.

116. **DENIES KNOWLEDGE OR INFORMATION** sufficient to form a belief as to the truth of the allegations contained in paragraph "116" of plaintiff's Complaint.

117. **DENIES KNOWLEDGE OR INFORMATION** sufficient to form a belief as to the truth of the allegations contained in paragraph "117" of plaintiff's Complaint.

118. **REPEATS AND REALLEGES** the admissions and denials as set forth hereinabove contained in paragraphs "1" through "117" of plaintiff's Complaint.

119. **DENIES** paragraph "119" of plaintiff's Complaint insofar as the allegations pertain to the answering defendant. Otherwise, **DENIES KNOWLEDGE OR INFORMATION** sufficient to form a belief as to the truth of the allegations contained in paragraph "119" of plaintiff's Complaint.

120. **DENIES** paragraph "120" of plaintiff's Complaint insofar as the allegations pertain to the answering defendant. Otherwise, **DENIES KNOWLEDGE OR INFORMATION** sufficient to form a belief as to the truth of the allegations contained in paragraph "120" of plaintiff's Complaint.

121. **DENIES** paragraph "121" of plaintiff's Complaint insofar as the allegations pertain to the answering defendant. Otherwise, **DENIES KNOWLEDGE OR INFORMATION** sufficient to form a belief as to the truth of the allegations contained in paragraph "121" of plaintiff's Complaint.

122. **DENIES** paragraph "122" of plaintiff's Complaint insofar as the allegations pertain to the answering defendant. Otherwise, **DENIES KNOWLEDGE OR INFORMATION** sufficient to form a belief as to the truth of the allegations contained in paragraph "122" of plaintiff's Complaint.

123. **REPEATS AND REALLEGES** the admissions and denials as set forth hereinabove contained in paragraphs "1" through "122" of plaintiff's Complaint.

124. **DENIES** paragraph "124" of plaintiff's Complaint insofar as the allegations pertain to the answering defendant. Otherwise, **DENIES KNOWLEDGE OR INFORMATION** sufficient to form a belief as to the truth of the allegations contained in paragraph "124" of plaintiff's Complaint.

125. **DENIES** paragraph "125" of plaintiff's Complaint insofar as the allegations pertain to the answering defendant. Otherwise, **DENIES KNOWLEDGE OR INFORMATION** sufficient to form a belief as to the truth of the allegations contained in paragraph "125" of plaintiff's Complaint.

126. **DENIES** paragraph "126" of plaintiff's Complaint insofar as the allegations pertain to the answering defendant. Otherwise, **DENIES KNOWLEDGE OR INFORMATION** sufficient to form a belief as to the truth of the allegations contained in paragraph "126" of plaintiff's Complaint.

127. **DENIES** paragraph "127" of plaintiff's Complaint insofar as the allegations pertain to the answering defendant. Otherwise, **DENIES KNOWLEDGE OR**

INFORMATION sufficient to form a belief as to the truth of the allegations contained in paragraph "127" of plaintiff's Complaint.

128. **REPEATS AND REALLEGES** the admissions and denials as set forth hereinabove contained in paragraphs "1" through "127" of plaintiff's Complaint.

129. **DENIES** paragraph "129" of plaintiff's Complaint insofar as the allegations pertain to the answering defendant. Otherwise, **DENIES KNOWLEDGE OR INFORMATION** sufficient to form a belief as to the truth of the allegations contained in paragraph "129" of plaintiff's Complaint.

130. **DENIES** paragraph "130" of plaintiff's Complaint insofar as the allegations pertain to the answering defendant. Otherwise, **DENIES KNOWLEDGE OR INFORMATION** sufficient to form a belief as to the truth of the allegations contained in paragraph "130" of plaintiff's Complaint.

131. **DENIES** paragraph "131" of plaintiff's Complaint insofar as the allegations pertain to the answering defendant. Otherwise, **DENIES KNOWLEDGE OR INFORMATION** sufficient to form a belief as to the truth of the allegations contained in paragraph "131" of plaintiff's Complaint.

132. **DENIES** paragraph "132" of plaintiff's Complaint insofar as the allegations pertain to the answering defendant. Otherwise, **DENIES KNOWLEDGE OR INFORMATION** sufficient to form a belief as to the truth of the allegations contained in paragraph "132" of plaintiff's Complaint.

133. **REPEATS and REALLEGES** the admissions and denials as set forth hereinabove contained in paragraphs "1" through "132" of plaintiff's Complaint.

134. **DENIES** paragraph "134" of plaintiff's Complaint insofar as the allegations pertain to the answering defendant. Otherwise, **DENIES KNOWLEDGE OR INFORMATION** sufficient to form a belief as to the truth of the allegations contained in paragraph "134" of plaintiff's Complaint.

135. **DENIES** paragraph "135" of plaintiff's Complaint insofar as the allegations pertain to the answering defendant. Otherwise, **DENIES KNOWLEDGE OR INFORMATION** sufficient to form a belief as to the truth of the allegations contained in paragraph "135" of plaintiff's Complaint.

136. **DENIES** paragraph "136" of plaintiff's Complaint insofar as the allegations pertain to the answering defendant. Otherwise, **DENIES KNOWLEDGE OR INFORMATION** sufficient to form a belief as to the truth of the allegations contained in paragraph "136" of plaintiff's Complaint.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

137. That whatever damages may have been sustained at the time and place alleged in the complaint by plaintiff were caused, in whole or in part, by the culpable conduct of the plaintiff and must be reduced proportionally to the culpable conduct of the plaintiff.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

138. That the equitable share of liability, if any, of the parties, shall be determined pursuant to the provisions of Articles 14 and 16 of the CPLR.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

139. Pursuant to Section 15-108 of the General Obligations Law, in the event this Court finds the defendant liable, in whole or in part, to the plaintiff, and in the event the plaintiff has released or recovered against some other party for any damages resulting from the incident which is the subject of this Complaint, the plaintiff's recovery from the defendant should be diminished in the proportion that the culpable conduct attributed to others bears to the culpable conduct which caused the alleged injuries or damages, or in the amount of the prior settlement or verdict, whichever is greater.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

140. That one or more causes of action in the complaint fail to state a cause of action upon which relief may be granted.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

141. That plaintiff has not met the conditions precedent to the commencement of this action as required by law.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

142. Plaintiff has failed to mitigate his alleged damages claimed herein.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

143. The amount of alleged damages claimed by plaintiff should be reduced pursuant to CPLR §4545 to the extent of any collateral source benefits, remuneration or compensation received.

AS AND FOR A EIGHTH AFFIRMATIVE DEFENSE

144. Plaintiff cannot maintain his claim for exemplary or punitive damages as against this defendant because he has failed to plead the ultimate facts necessary to support such a claim.

AS AND FOR AN NINTH AFFIRMATIVE DEFENSE

178. The plaintiff sustained the injuries or damages alleged, then said injuries and damages are proximally caused by persons and/or entities not connected with the defendant and currently unknown to defendant.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

179. If the plaintiff sustained the injuries and damages as alleged, then said injuries and damages resulted from the plaintiff's knowing and voluntary assumption of the risk.

AS AND FOR A ELEVENTH AFFIRMATIVE DEFENSE

180. That any claims for punitive damages contained in the Complaint fail to state a claim upon which relief may be granted, violate various provisions of the Constitution of the United States and the State of New York, and violate various statutory proscriptions thereof.

AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE

181. That defendant denies that it is liable in any way to plaintiff under any legal theory because of the doctrine of immunity, whether qualified, sovereign, statutory or otherwise.

AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE

182. That plaintiff is not entitled to recover damages in this action under 42 U.S.C. §1983.

AS AND FOR A FOURTEENTH AFFIRMATIVE DEFENSE

183. That this defendant reserves the right to amend its answer and/or affirmative defenses that may be determined applicable in the future by discovery in this matter.

AS AND FOR A FIFTEENTH AFFIRMATIVE DEFENSE

184 Plaintiff has failed to exhaust his administrative remedies and, as such, his claim is barred.

AS AND FOR AN SIXTEENTH AFFIRMATIVE DEFENSE

185. The defendant's actions were taken in good faith and pursuant to constitutional and statutory authority. Accordingly, the defendant has committed no wrongful act of any nature resulting in a violation of plaintiff's federal or state constitutional rights.

AS AND FOR A SEVENTEENTH AFFIRMATIVE DEFENSE

186. That no policy, statement, ordinance, regulation or decision officially adopted and/or formulated by defendant or otherwise ratified by defendant authorized a deprivation of plaintiff's constitutional rights.

AS AND FOR A EIGHTEENTH AFFIRMATIVE DEFENSE

187. Answering defendant alleges that in treating the plaintiff, the medical providers at the Facility exercised their best medical judgment.


JURY DEMAND

188. Demand is made for a jury trial on all issues.

WHEREFORE, defendant, CORRECTIONAL MEDICAL CARE, INC., demands judgment dismissing the complaint herein, together with the costs and disbursements of this action.

Dated: July 28, 2014

SMITH, SOVIK, KENDRICK & SUGNET, P.C.



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